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In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 985.

CYRUS S. EATON,

Petitioner,

vs.

HAROLD S. HOBSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF IN OPPOSITION.

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TABLE OF CONTENTS.

Question Presented ---------- 1

Reasons For Denying Writ ---------- 2

(1) The Findings Below, Giving Due Regard to the Opportunity of the Trial Court to Judge of the Credibility of the Witnesses, Are Consistent With and Required By the Record Evidence ---------- 2

(2) The District Court Complied With the Requirements of Rule 52(a) in Rendering Findings as to Such Ultimate Facts as Were Necessary to Decide the Case ---------- 4

(3) The Decisions Below Have Not Departed From the Accepted and Usual Course of Judicial Proceedings So as to Call For an Exercise of This Court's Power of Supervision ---------- 6

Conclusion ---------- 7

TABLE OF AUTHORITIES.

Cases.

Adamson v. Gilliland, 242 U.S. 350 (1917) ---------- 3

Cleveland Trust Co. v. Eaton, 11 Ohio Misc. 151, 229 N.E. 2d 850 (1967) ---------- 2

Cross v. Ledford, 161 Ohio St. 469, 120 N.E.2d 118 (1954) ---------- 6

Elam v. United States, 250 F.2d 582 (6th Cir. 1958) 5

Schilling v. Schwitzer-Cummins Co., 142 F.2d 82 (D.C. Cir. 1944) ---------- 5

United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945) ---------- 3

United States v. Oregon State Medical Society, 343 U.S. 326 (1952) ---------- 3

United States v. Yellow Cab Co., 338 U.S. 338 (1949) 3

Young v. Murphy, 9 FED. RULES SERV. 52a.11, Case 2 (N.D. Ohio 1946) ---------- 5

Other.

3A BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE 477 (1961) ---------- 5

Federal Rules of Civil Procedure, Rule 52(a) ..1, 3, 4, 5, 7

5 MOORE, FEDERAL PRACTICE ¶ 52.06[1], at 2653 (2d ed. 1964) ---------- 5

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BRIEF IN OPPOSITION.

QUESTION PRESENTED.

Did the courts below fail to comply with the requirements of Rule 52(a) or so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, when the District Court (a) rendered specific findings as to such ultimate facts as were necessary to decide the case, and (b) concluded upon remand after a careful and thorough reconsideration of the oral and documentary evidence that Respondent proved by clear and convincing evidence that he was the recipient of a gift, and the Court of Appeals, upon consideration of the District Court's findings, affirmed the decision below.

REASONS FOR DENYING WRIT.

While Respondent does not accept Petitioner's Statement of the Case, Respondent will not burden the Court with a Counterstatement in view of the fact that the facts, even as stated by Petitioner,[1] do not give rise to a case that requires exercise of this Court's power of supervision.

The writ of certiorari should be denied because:

(1) The Findings Below, Giving Due Regard to the Opportunity of the Trial Court to Judge of the Credibility of the Witnesses, Are Consistent With and Required By the Record Evidence.

Petitioner's arguments concerning the asserted legal insufficiency of the findings and decisions below are in reality nothing more than an attack on the conclusions reached below concerning credibility of the witnesses (Pet., pp. 8-12).[2]

The District Court made a most explicit finding that its decision rested essentially on a belief in the testimony of Respondent, which was amply supported by numerous documentary exhibits, and a disbelief in the testimony of Petitioner. Its ultimate finding of fact was that Respondent "is the true and beneficial owner of the claims" and that Petitioner "has no interest whatever" in them

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[1] It is important, however, to point out with respect to page 5, footnote 2 of the Petition that this case is in no way connected with *Cleveland Trust Co. v. Eaton*, 11 Ohio Misc. 151, 229 N.E.2d 850 (1967). No aspect of that case can have any possible bearing on this case.

[2] The following abbreviations will be used throughout this Brief:

Pet., p. __: The Petition for Writ of Certiorari.

App., p. __: The Appendices to the Petition for Writ of Certiorari.

(App., p. 24a).[3] This finding obviously amounts to a determination that the assignment to Respondent was outright and unconditional, and not "for collection only" as testified to by Petitioner.

This Court said in *Adamson v. Gilliland*, 242 U.S. 350 (1917), that when the lower court's findings of fact are based in substantial measure on oral testimony and the validity of the trial court's findings depend upon whether the witnesses before him spoke the truth, the accepted rule is that such findings "must be treated as unassailable." This is particularly true, as in this case, of "findings as to design, motive and intent with which men act" for such findings "depend peculiarly upon the credit given to witnesses by those who see and hear them." *United States v. Yellow Cab Co.*, 338 U.S. 338, 341 (1949). "[A]nd upon an issue like the witness' own intent, as to which he alone can testify, the finding is indeed 'unassailable,' except in the most exceptional cases." *United States v. Aluminum Co. of America*, 148 F.2d 416, 433 (2d Cir. 1945).[4]

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[3] The District Court's ultimate finding as to the ownership of the claims is directly supported by two subsidiary findings which are based upon numerous documentary exhibits as well as Respondent's testimony. *First*, the court found that certain prior sworn statements made by Petitioner were "inconsistent" with his claim of ownership in the present case and that "such statements are of great importance in determining the credibility of" Petitioner (App., p. 23a). *Second*, the District Court refers to a substantial amount of record evidence in its findings which demonstrates a course of conduct on Petitioner's part during the years in question which, if not deliberately calculated to place assets beyond the reach of creditors, nonetheless had that effect (App., pp. 21a-22a).

[4] This Court also held in *United States v. Oregon State Medical Society*, 343 U.S. 326, 332 (1952), that there is no case more appropriate for adherence to Rule 52(a), which provides that where an action is tried by a court without a jury, "findings of

(Continued on following page)

In the instant case, the District Court prepared fifteen pages of "Findings of Fact and Conclusions of Law" (App., pp. 9a-24a).[5] While these findings do not traverse every subsidiary detail of the evidence, they refer to numerous exhibits in support of Harold Hobson's testimony and the court's ultimate conclusion that Harold Hobson "is the true and beneficial owner of the claims" (App., p. 24a). Also, the District Court makes reference to prior sworn statements of Eaton and other documentary evidence as bearing on credibility in rejecting Eaton's testimony that the assignment in question was "for collection only" (App., p. 23a).

(2) The District Court Complied With the Requirements of Rule 52(a) in Rendering Findings as to Such Ultimate Facts as Were Necessary to Decide the Case.

Petitioner's assertion that the District Court's findings do not comport with the requirements of specificity set forth in Rule 52(a) has no support in fact or law.[6] The

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fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses," than one in which there is "a vast record of cumulative evidence as to long-past transactions, motives, and purposes, the effect of which depends largely on credibility of witnesses."

[5] Although the District Court's decision was denominated "Findings of Fact and Conclusions of Law," Petitioner has omitted that caption in reprinting the decision in its Appendix to this Petition (See App., p. 9a). The District Court's decision also expressly states that it "is adopted as findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure" (App., p. 24a).

[6] If Petitioner had seriously believed that the District Court's findings were inadequate, it is curious that he did not seek to have that court amplify or amend its findings through Rule 52(b), which provides that "upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly."

test as to the legal sufficiency of a trial court's findings is whether they "set forth the ultimate facts together with sufficient findings to support the court's opinion and judgment." *Young v. Murphy*, 9 FED. RULES SERV. 52a.11, Case 2 (N.D. Ohio 1946). Thus, a trial court need only make brief, definite, and pertinent findings and conclusions upon contested matters without elaboration extending into minute and unnecessary details on every facet of the case. 5 MOORE, FEDERAL PRACTICE ¶ 52.06[1], at 2653 (2d ed. 1964).[7]

The District Court's findings and conclusions in the instant case meet the highest standard of adequacy under Rule 52(a). "[W]hile counsel may be disappointed that findings do not discuss propositions sincerely contended for, that, alone, does not make them inadequate or suggest that such propositions were not understood by the court." *Schilling v. Schwitzer-Cummins Co.*, 142 F.2d 82, 84 (D.C. Cir. 1944).[8]

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[7] See the Advisory Committee Note to Rule 52(a), reprinted in 3A BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE 477 (1961), where it is stated that the trial court's findings "should represent the judge's own determination and not the long, often argumentative statements of successful counsel * * *. [And] the judge need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for over elaboration of detail or particularization of facts. * * *" (Citations omitted.)

[8] In *Elam v. United States*, 250 F.2d 582, 583 (6th Cir. 1958), the court found that "the trial judge filed a six page memorandum decision, setting out his basic findings and conclusions in considerable detail, and no separate findings of fact and conclusions of law were filed. The memorandum decision, while not containing specific findings on every subsidiary evidentiary issue amply complied with the requirements of Rule 52 of the Federal Rules of Civil Procedure, 28 U.S.C.A. Accordingly the judgment is affirmed."

(3) The Decisions Below Have Not Departed From the Accepted and Usual Course of Judicial Proceedings So as to Call For an Exercise of This Court's Power of Supervision.

There are plainly no grounds in this case for an exercise of this Court's power of supervision under its Rule 19. The District Court decided after a lengthy trial of eight days and the submission of exhaustive briefs on the facts and law by both parties that Respondent was the true and sole owner of the claims in question. The findings of the District Court cover with more than adequate detail, and with compelling support in the evidence, all of the issues of fact essential to that decision.

The Court of Appeals, upon review of the District Court's findings and the evidence, concluded that any relinquishment of Petitioner's ownership in the claims in favor of Respondent would constitute a gift inter vivos, and hence that under Ohio law such a gift had to be proved by clear and convincing evidence.[9] Accordingly, it remanded the case to the District Court for a determination as to whether Respondent had established the facts supporting that conclusion by such standard of proof (App., p. 8a). The District Court concluded upon remand after a "careful and thorough reconsideration of the evi-

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[9] The Court of Appeals defined what is meant by clear and convincing evidence under Ohio law as being " 'that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.' *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118, 123 (1954)." (App., pp. 6a-7a, n. 2.)

dence" [10] that Respondent "has proved by clear and convincing evidence that he was the recipient of a gift, from the defendant Cyrus S. Eaton, of the beneficial interest in the claims involved herein" (App., p. 28a).

Upon consideration of the District Court's "Conclusion Upon Remand" and the briefs of the parties with reference thereto, the Court of Appeals found "that the supplemental finding of the trial judge is supported by the evidence and is not clearly erroneous," and accordingly affirmed the judgment of the District Court (App., p. 26a).

It is evident from the foregoing that both of the courts below were conscious of their responsibilities and the requirements of Rule 52(a). In short, it is submitted that they were careful to avoid any departure "from the accepted and usual course of judicial proceedings" in rendering their respective decisions.

CONCLUSION.

For the reasons stated above, Respondent respectfully submits that this case presents no important question of federal law; that the decisions below fully comply with all of the requirements of Rule 52(a); that the courts below have not sanctioned nor has there been any

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[10] Petitioner complains that the District Court did not indicate in the Conclusion Upon Remand "what evidence it had relied upon as being clear and convincing" (Pet., p. 9). However, the District Court expressly stated that in reaching its conclusion it considered: (1) appendix to brief of defendant-appellant; and (2) appendix to brief of plaintiff-appellee (App., p. 28a). The latter two items contain most of the transcript of testimony given at the trial, as well as a substantial number of the most pertinent exhibits introduced and relied upon by the parties at the trial.

departure from the accepted and usual course of judicial proceedings so as to require an exercise of this Court's power of supervision; and that accordingly the writ of certiorari should be denied.

Respectfully submitted,

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